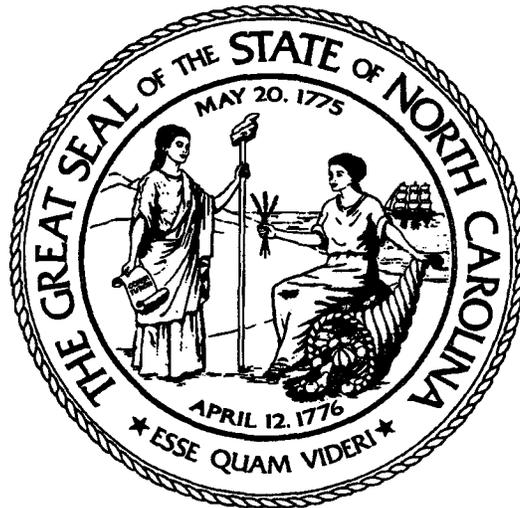


**LEGISLATIVE
RESEARCH COMMISSION**

**ECONOMIC IMPACT OF RULES
COMMITTEE**



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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TABLE OF CONTENTS

LETTER OF TRANSMITTAL..... i
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP..... ii
PREFACE..... 1
COMMITTEE PROCEEDINGS..... 3
COMMITTEE RECOMMENDATIONS AND
LEGISLATIVE PROPOSALS..... 7

Legislative Proposal I. - A BILL TO BE ENTITLED AN ACT TO REQUIRE
STATE AGENCIES TO PREPARE AND PROVIDE TO THE PUBLIC A
FISCAL ANALYSIS OF ALL PROPOSED RULES THAT HAVE A
SUBSTANTIAL ECONOMIC IMPACT AND TO APPROPRIATE FUNDS
TO IMPLEMENT THIS REQUIREMENT. 8

Legislative Proposal II. - A BILL TO BE ENTITLED AN ACT TO CREATE
THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE
OVERSIGHT COMMITTEE AND TO PROVIDE THAT NO
ADMINISTRATIVE RULE SHALL BECOME EFFECTIVE UNTIL
APPROVED BY THE GENERAL ASSEMBLY. 13

Legislative Proposal III. - A BILL TO BE ENTITLED AN ACT TO PROVIDE
THAT THE SENATE APPOINTMENTS TO THE RULES REVIEW
COMMISSION SHALL BE MADE BY THE PRESIDENT PRO TEMPORE
RATHER THAN THE PRESIDENT OF THE SENATE..... 19

Legislative Proposal IV. - A BILL TO BE ENTITLED AN ACT TO REQUIRE
AGENCIES TO BEGIN THE PROCESS OF ADOPTING A PERMANENT
RULE BY PUBLISHING A NOTICE OF INTENDED RULE MAKING
RATHER THAN PUBLISHING THE PROPOSED TEXT OF A RULE
CHANGE. 20

Legislative Proposal V. - A BILL TO BE ENTITLED AN ACT TO
STRENGTHEN THE AUTHORITY OF THE RULES REVIEW
COMMISSION TO DETERMINE THE NECESSITY OF A PROPOSED
RULE. 28

APPENDICES

RELEVANT PORTIONS OF
UNRATIFIED H.B. 1319 (2ND EDITION)
OF THE 1993 SESSION, THE STUDIES BILL, AND
SENATE BILL 1261 OF THE 1993 SESSION A1

**MEMBERSHIP OF THE LRC COMMITTEE ON
ECONOMIC IMPACT OF RULES..... B1**

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096



January 11, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on the Economic Impact of Rules. The report was prepared by the Legislative Research Commission's Committee on Economic Impact of Rules pursuant to G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan Blue".

Daniel T. Blue, Jr.
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight".

Marc Basnight
President Pro Tempore

Cochairmen
Legislative Research Commission



1993-1994

LEGISLATIVE RESEARCH COMMISSION

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the Senate
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the Economic Impact of Rules would have been authorized by Section 2.1(93) of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session.

Part II of the 2nd Edition of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider Senate Bill 1261 in determining the nature, scope and aspects of the study. Section 2 of Senate Bill 1261 reads in part: "The Economic Impact of Rules Study Commission shall study:

(1) The advisability of requiring all State agencies subject to the rulemaking provisions of Chapter 150B of the General Statutes to determine and provide to the public for review and comment an assessment of the economic costs and benefits of proposed rules;

(2) The costs to State agencies of producing assessments of the economic costs and benefits of proposed rules; and

(3) Any other issues related to State agency rule making that the Commission chooses to study." The relevant portions of the 2nd Edition of House Bill 1319 and Senate Bill 1261 are included in Appendix A. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its Regulation Grouping area under the direction of Representative Harold J. Brubaker. (House Bill 1319 was later amended and ratified in 1994 with the Legislative Research Commission studies 2nd Edition language deleted because the Legislative Research Commission had already acted on these matters).

The Committee was chaired by Senator J. K. Sherron and Representative David Redwine. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Economic Impact of Rules Committee met twice. At its first meeting on December 9, 1994, the committee heard from seven speakers.

Senate Co-Chair J.K. Sherron first recognized staff counsel Karen Cochrane Brown to review the committee's charge and to provide a summary of Senate Bill 1012. The study was originally proposed in Senate Bill 1261 which set forth the scope of the study. The substance of Senate Bill 1261 was eventually included in the Studies Bill (HB 1319), and assigned to the Legislative Research Commission.

The proposal to require agencies to perform a cost/benefit assessment was embodied in Senate Bill 1012 which was introduced in the 1993 Session. In its original form that bill proposed to insert a new procedural requirement in the adoption of rules by agencies subject to the Administrative Procedure Act (Chapter 150B). An agency seeking any permanent rule change having a "substantial economic impact" on any person or entity doing business in the State would be required to make available to the public for review and comment a preliminary assessment of the economic and social costs and benefits of the proposed change. The bill did not pass the Senate. Subsequently, a proposed committee substitute to the bill was drafted, but never adopted. A copy of the committee substitute was presented to the committee for its consideration.

Next, the committee heard from Joseph J. DeLuca, Jr., Staff Director and Counsel to the North Carolina Rules Review Commission. Mr. DeLuca discussed the role of the Commission and reviewed the statutory standard which the Commission applies in its review of all permanent rules. With regard to the requirement that a rule must be reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, Mr. DeLuca stated that the Commission attempted to avoid passing judgement on this

standard. Mr. DeLuca indicated that the Commission felt that the statute did not give them authority to substitute their judgement for the agencies' with regard to whether a rule was necessary.

LeAnne Winner, Assistant Director for Strategic Economic Development, then spoke on behalf of the Governor's Policy Office. Ms. Winner indicated that an informal polling of the Governor's Cabinet had been done and some concerns were expressed about Senate Bill 1012. However, they were looking forward to the results of the study being done by the Department of Environment, Health and Natural Resources, which, it was anticipated, would be completed by the end of the fiscal year.

Richard Whisnant, General Counsel, Department of Environment, Health and Natural Resources, then presented an update on DEHNR's study to develop a protocol for economic assessments of environmental rules. Mr. Whisnant distributed copies of the Department's Regulatory Agenda to the committee. This document listed all rules on which the Department is currently working, and is intended to provide an "early warning" to all interested parties. Mr. Whisnant then discussed the status of DEHNR's study of economic analysis of rules. The Department has enlisted the assistance of graduate students from UNC-CH and an advisory committee comprised of individuals from local government, the environmental community, industry and academia. After receiving input from these groups, the Department intends to retain a consultant to recommend protocol for the Department in performing economic analysis of rules.

Paul Wilms spoke to the committee on behalf of the North Carolina Home Builders Association. Mr. Wilms indicated that his organization is supportive of the committee substitute for SB 1012, and recommended that the committee adopt the concept. He argued that the burden of showing what impact a rule will have should be on the proponent of the rule rather than those who will be impacted by the rule.

Ann Fulton, General Counsel, North Carolina Alcoholic Beverage Control Commission, express serious concerns about the impact this new requirement would have on her agency. She stated that such a requirement could paralyse the rule-making process in many cases.

Finally, Brian Morton, Senior Economist, North Carolina Environmental Defense Fund, distinguished an economic impact statement from a cost/benefit analysis. He indicated that in his experience going through the often difficult and expensive process of obtaining a cost benefit analysis did not necessarily result in better rules. He cautioned the committee to carefully consider the goal to be acheived before imposing such a requirement on agencies.

The committee's next meeting was held on December 20, 1994. House Co-Chair Representative David Redwine first recognized Sabra Faires, staff counsel, to discuss the history of the current Article 2A of Chapter 150B which sets forth the procedure for rule-making. A discussion then ensued concerning the constitutional issues raised by the delegation of quasi-judicial or quasi-legislative power to the Rules Review Commission.

Next, Sarah Stuckey, Director, Local State Relations, Department of Administration, presented an explanation of Executive Order No. 49, which established a procedure for fiscal notes on administrative rules affecting local governments.

Staff counsel, Karen Cochrane Brown, then presented an outline of the options raised at the December 9, 1994 meeting. The first set of five options pertained to strengthening the authority of the Rules Review Commission. The second set of four options dealt with trying to improve the notice which is given to affected parties of a rule's potential impact. The final option was the proposed committee substitute to SB 1012. Sabra Faires then discussed several issues raised by the proposed draft.

Jane Gray from the Attorney General's office was then recognized to summarize the Attorney General's opinion regarding the constitutional issues in this area.

Senator Blackmon suggested that the committee should also consider including HB 1965 among its recommendations. That bill would require that agencies give notice of intended rule-making before commencement of the rule-making process.

Finally, Senator Sherron proposed that five bills be drafted for inclusion in the committee's report:

(1) A bill requiring agencies to perform fiscal analyses of all rules that have a substantial economic impact.

(2) A bill providing that all rules must be approved by the General Assembly before taking effect.

(3) A bill changing the Senate appointment to the Rules Review Commission from the President to the President Pro Tempore.

(4) A bill requiring agencies to give advance notice of intended rule-making.

(5) A bill to strengthen the Rules Review Commission's authority to evaluate the necessity of a proposed rule.

On January 4, 1994, the committee met for the third and final time. After reviewing the bills in detail, the committee voted to recommend the bills, with a few minor amendments, to the Legislative Research Commission. At the end of the meeting, the committee voted to approve the entire report.

COMMITTEE RECOMMENDATIONS

The Committee recommends the following legislation to the 1995 General Assembly. These legislative proposals address various aspects of the rulemaking process and are intended to increase the amount of scrutiny administrative rules receive before becoming effective and to improve the advance notice of rulemaking to interested parties.

- I. A BILL TO BE ENTITLED AN ACT TO REQUIRE STATE AGENCIES TO PREPARE AND PROVIDE TO THE PUBLIC A FISCAL ANALYSIS OF ALL PROPOSED RULES THAT HAVE A SUBSTANTIAL ECONOMIC IMPACT AND TO APPROPRIATE FUNDS TO IMPLEMENT THIS REQUIREMENT.
- II. A BILL TO BE ENTITLED AN ACT TO CREATE THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE AND TO PROVIDE THAT NO ADMINISTRATIVE RULE SHALL BECOME EFFECTIVE UNTIL APPROVED BY THE GENERAL ASSEMBLY.
- III. A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE SENATE APPOINTMENTS TO THE RULES REVIEW COMMISSION SHALL BE MADE BY THE PRESIDENT PRO TEMPORE RATHER THAN THE PRESIDENT OF THE SENATE.
- IV. A BILL TO BE ENTITLED AN ACT TO REQUIRE AGENCIES TO BEGIN THE PROCESS OF ADOPTING A PERMANENT RULE BY PUBLISHING A NOTICE OF INTENDED RULE MAKING RATHER THAN PUBLISHING THE PROPOSED TEXT OF A RULE CHANGE.
- V. A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE AUTHORITY OF THE RULES REVIEW COMMISSION TO DETERMINE THE NECESSITY OF A PROPOSED RULE.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S or H

D

95-LJ-13(1.3)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Require Rule Fiscal Note.

(Public)

Sponsors: Economic Impact of Rules Study Committee.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A FISCAL NOTE FOR ALL PROPOSED RULES THAT HAVE
3 A SUBSTANTIAL ECONOMIC IMPACT AND TO APPROPRIATE FUNDS TO
4 IMPLEMENT THIS REQUIREMENT.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 150B-21.4 is amended by adding a new
7 subsection to read:
8 "(b1) Substantial Economic Impact. -- Before an agency
9 publishes in the North Carolina Register the proposed text of a
10 permanent rule change that would have a substantial economic
11 impact and is not identical to a federal regulation the agency is
12 required to adopt, the agency must obtain from the Office of
13 State Budget and Management a fiscal note for the proposed rule
14 change. If an agency is not sure whether a proposed rule change
15 would have a substantial economic impact, the agency may ask the
16 Office of State Budget and Management to determine whether the
17 proposed rule change has a substantial economic impact. The
18 Office of State Budget and Management must prepare a fiscal note
19 for a proposed rule change within 90 days after receiving a
20 written request for the note.
21 A fiscal note for a rule must contain the following:
22 (1) A description of the persons who would be affected
23 by the proposed rule change.
24 (2) A description of the types of expenditures that
25 persons affected by the proposed rule change would

1 have to make to comply with the rule and an
2 estimate of these expenditures.

3 (3) A description of the purpose and benefits of the
4 proposed rule change.

5 (4) An explanation of how the estimate of expenditures
6 was computed.

7 As used in this subsection, the term 'substantial economic
8 impact' means an aggregate financial impact on all persons
9 affected of at least one million dollars (\$1,000,000) in a
10 twelve-month period."

11 Sec. 2. G.S. 150B-21.1(d) reads as rewritten:

12 "(d) Effective Date and Expiration. -- A temporary rule becomes
13 effective on the date specified in G.S. 150B-21.3. A temporary
14 rule expires on the date specified in the rule or ~~180~~ 210 days
15 from the date the rule becomes effective, whichever comes first."

16 Sec. 3. G.S. 150B-21.2(e) reads as rewritten:

17 "(e) Comments. -- An agency must accept comments on the text
18 of a proposed rule that is published in the North Carolina
19 Register and requires a fiscal analysis under G.S. 150B-21.4(b1)
20 for at least 60 days after the text is published or until the
21 date of any public hearing held on the proposed rule, whichever
22 is longer. An agency must accept comments on the text of ~~a~~ any
23 other proposed rule published in the North Carolina Register for
24 at least 30 days after the text is published or until the date of
25 any public hearing held on the proposed rule, whichever is
26 longer. An agency must accept comments on a statement of the
27 subject matter of proposed rule making until the public hearing
28 on the subject matter. An agency must consider fully all written
29 and oral comments received."

30 Sec. 4. G.S. 150B-21.9(a) reads as rewritten:

31 "(a) Standards. -- The Commission must determine whether a
32 rule meets all of the following criteria:

33 (1) It is within the authority delegated to the agency
34 by the General Assembly.

35 (2) It is clear and unambiguous.

36 (3) It is reasonably necessary to fulfill a duty
37 delegated to the agency by the General Assembly.

38 The Commission may determine if a rule submitted to it was
39 adopted in accordance with Part 2 of this Article. The
40 Commission may ask the Office of State Budget and Management to
41 determine if a rule has a substantial economic impact and is
42 therefore required to have a fiscal note. The Commission must
43 ask that Office to make this determination if a fiscal note was
44 not prepared for a rule and the Commission receives a written

1 request for a determination of whether the rule has a substantial
2 economic impact.

3 The Commission must notify the agency that adopted the rule if
4 it determines that a rule was not adopted in accordance with Part
5 2 of this Article and must return the rule to the agency. Entry
6 of a rule in the North Carolina Administrative Code after review
7 by the Commission is conclusive evidence that the rule was
8 adopted in accordance with Part 2 of this Article."

9 Sec. 5. [Utilities Commission] G.S. 62-31 reads as
10 rewritten:

11 "§ 62-31. Power to make and enforce rules and regulations for
12 public utilities.

13 The Commission shall have and exercise full power and authority
14 to administer and enforce the provisions of this Chapter, and to
15 make and enforce reasonable and necessary rules and regulations
16 to that end. The Commission shall request the Office of State
17 Budget and Management to prepare a fiscal note for a proposed new
18 or amended rule or regulation that has a substantial economic
19 impact, as defined in G.S. 150B-21.4(b1). The Commission shall
20 not take final action on a proposed rule change that has a
21 substantial economic impact until at least 60 days after the
22 Office of State Budget and Management gives the Commission a copy
23 of the fiscal note for the proposed change."

24 Sec. 6. [Employment Security Commission] G.S. 96-4(b)
25 reads as rewritten:

26 "(b) Regulations and General and Special Rules. -- General and
27 special rules may be adopted, amended, or rescinded by the
28 Commission only after public hearing or opportunity to be heard
29 thereon, of which proper notice has been given by mail to the
30 last known address in cases of special rules, or by publication
31 as herein provided, and by one publication as herein provided as
32 to general rules. The Commission may not take final action on a
33 general or special rule that has a substantial economic impact,
34 as defined in G.S. 150B-21.4(b1), until 60 days after the Office
35 of State Budget and Management prepares a fiscal note for the
36 proposed rule and and gives the Commission a copy of the note.
37 General rules shall become effective 10 days after filing with
38 the Secretary of State and publication in one or more newspapers
39 of general circulation in this State. Special rules shall become
40 effective 10 days after notification to or mailing to the last
41 known address of the individuals or concerns affected thereby.
42 Before the adoption, amendment, or repeal of any permanent
43 regulation, the Commission shall publish notice of the public
44 hearing and offer any person an opportunity to present data,

1 opinions, and arguments. The notice shall be published in one or
2 more newspapers of general circulation in this State at least 10
3 days before the public hearing and at least 20 days prior to the
4 proposed effective date of the proposed permanent regulation.
5 The published notice of public hearing shall include the time and
6 place of the public hearing; a statement of the manner in which
7 data, opinions, and arguments may be submitted to or before the
8 Commission; a statement of the terms or substance of the proposed
9 regulation; a statement of whether a fiscal note has been or will
10 be prepared for the proposed regulation and the proposed
11 effective date of the regulation. Any permanent regulation
12 adopted after following the above procedure shall become
13 effective on its effective date and after it is published in the
14 manner provided for in subsection (c) as well as such additional
15 publication as the Commission deems appropriate. Additionally,
16 the Commission shall provide notice of adoption by mail to the
17 last known addresses of all persons who submitted data, opinions,
18 or arguments to the Commission with respect to the regulation.
19 Temporary regulations may be adopted, amended, or rescinded by
20 the Commission and shall become effective in the manner and at
21 the time prescribed by the Commission but shall remain in force
22 for no longer than 120 days."

23 Sec. 7. [Industrial Commission] G.S. 97-80(a) reads as
24 rewritten:

25 "(a) The Commission may make rules, not inconsistent with this
26 Article, for carrying out the provisions of this Article. The
27 Commission shall request the Office of State Budget and
28 Management to prepare a fiscal note for a proposed new or amended
29 rule that has a substantial economic impact, as defined in G.S.
30 150B-21.4(b1). The Commission shall not take final action on a
31 proposed rule change that has a substantial economic impact until
32 at least 60 days after the Office of State Budget and Management
33 gives the Commission a copy of the fiscal note for the proposed
34 change.

35 Processes, procedure, and discovery under this Article shall be
36 as summary and simple as reasonably may be."

37 Sec. 8. [Department of Revenue] G.S. 105-262 reads as
38 rewritten:

39 "§ 105-262. Rules.

40 The Secretary of Revenue may adopt rules needed to administer a
41 tax collected by the Secretary or to fulfill another duty
42 delegated to the Secretary. The Tax Review Board shall review a
43 new rule or a change to a rule before it is filed in the North
44 Carolina Administrative Code.

1 The Secretary must ask the Office of State Budget and
2 Management to prepare a fiscal note for a proposed new rule or a
3 proposed change to a rule that has a substantial economic impact,
4 as defined in G.S. 150B-21.4(b1). The Secretary may not take
5 final action on a proposed rule change that has a substantial
6 economic impact until at least 60 days after the Office of State
7 Budget and Management gives the Commission a copy of the fiscal
8 note for the proposed change."

9 Sec. 9. [Building Code Council] G.S. 143-138(a) reads
10 as rewritten:

11 " (a) Preparation and Adoption. -- The Building Code Council is
12 hereby empowered to prepare and adopt, in accordance with the
13 provisions of this Article, a North Carolina State Building Code.
14 Prior to the adoption of this Code, or any part thereof, the
15 Council shall hold at least one public hearing. A notice of such
16 public hearing shall be given once a week for two successive
17 calendar weeks in a newspaper published in Raleigh, said notice
18 to be published the first time not less than 15 days prior to the
19 date fixed for said hearing. The Council may hold such other
20 public hearings and give such other notice as it may deem
21 necessary.

22 The Council shall request the Office of State Budget and
23 Management to prepare a fiscal note for a proposed Code change
24 that has a substantial economic impact, as defined in G.S. 150B-
25 21.4(b1). The Commission shall not take final action on a
26 proposed Code change that has a substantial economic impact until
27 at least 60 days after the Office of State Budget and Management
28 gives the Commission a copy of the fiscal note for the proposed
29 change."

30 Sec. 10. There is appropriated from the General Fund to
31 the Office of State Budget and Management the sum of four hundred
32 fifty thousand dollars (\$450,000) for fiscal year 1995-96 and the
33 sum of nine hundred thousand dollars (\$900,000) for fiscal year
34 1996-97 to implement this act.

35 Sec. 11. This act becomes effective July 1, 1995. It
36 applies to rules for which a notice of rule making is published
37 in the North Carolina Register on or after the effective date and
38 to rule and Building Code changes that are initiated on or after
39 that date and are not subject to the procedures in Chapter 150B
40 of the General Statutes, the Administrative Procedure Act.

41

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S or H

D

95-RO-03

THIS IS A DRAFT 20-JAN-95 12:08:16

Short Title: Legis. Approval of Rules.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE
3 OVERSIGHT COMMITTEE AND TO PROVIDE THAT NO ADMINISTRATIVE RULE
4 SHALL BECOME EFFECTIVE UNTIL APPROVED BY THE GENERAL ASSEMBLY.
5 The General Assembly of North Carolina enacts:
6 Section 1. Chapter 120 of the General Statutes is
7 amended by adding a new Article to read:
8 "ARTICLE 12K.
9 "Joint Legislative Administrative Procedure Oversight Committee.
10 "§ 120-70.100. Creation and membership of Joint Legislative
11 Administrative Procedure Oversight Committee.
12 The Joint Legislative Administrative Procedure Oversight
13 Committee is established. The Committee consists of 16 members as
14 follows:
15 (1) Eight members of the Senate appointed by the
16 President Pro Tempore of the Senate, at least two
17 of whom are members of the minority party; and
18 (2) Eight members of the House of Representatives
19 appointed by the Speaker of the House of

1 Representatives, at least three of whom are members
2 of the minority party.

3 Terms on the Committee are for two years and begin on January
4 15 of each odd-numbered year, except the terms of the initial
5 members, which begin on appointment. Members may complete a term
6 of service on the Committee even if they do not seek reelection
7 or are not reelected to the General Assembly, but resignation or
8 removal from service in the General Assembly constitutes
9 resignation or removal from service on the Committee.

10 A member continues to serve until his successor is appointed. A
11 vacancy shall be filled within 30 days by the officer who made
12 the original appointment.

13 "§ 120-70.101. Purpose and powers of Committee.

14 (a) The Joint Legislative Administrative Procedure Oversight
15 Committee shall:

16 (1) Review reports prepared by the Rules Review
17 Commission containing the text and a summary of
18 each rule reviewed by the Commission in accordance
19 with Article 2B of Chapter 150B of the General
20 Statutes and the Commission's recommendation
21 regarding approval of the rule.

22 (2) Accept or reject the recommendation of the Rules
23 Review Commission with regard to the approval of
24 each rule.

25 (3) Report to the General Assembly, as needed, its
26 determinations regarding the approval of rules.

27 (4) Request that an agency present a written
28 explanation of any alternatives to rule making
29 which the agency may have considered and the
30 reasons for rejecting the alternatives.

31 (5) Request information from any agency or other
32 interested party concerning the necessity of any
33 administrative rule or other information relating
34 to the rule making process.

35 These powers, which are enumerated by way of illustration,
36 shall be liberally construed to provide for the maximum oversight
37 by the Committee of all rule making activity in this State.

38 (b) The Committee may make interim reports to the General
39 Assembly recommending the approval of any rules submitted to it
40 by the Rules Review Commission. A report to the General Assembly

1 may contain any legislation needed to implement a recommendation
2 of the Committee.

3 "§ 120-70.102. Organization of Committee.

4 (a) The President Pro Tempore of the Senate and the Speaker of
5 the House of Representatives shall each designate a cochair of
6 the Joint Legislative Administrative Procedure Oversight
7 Committee. The Committee shall meet at least once a quarter and
8 may meet at other times upon the joint call of the cochairs.

9 (b) A quorum of the Committee is nine members. No action may
10 be taken except by a majority vote at a meeting at which a quorum
11 is present. While in the discharge of its official duties, the
12 Committee has the powers of a joint committee under G.S. 120-19
13 and G.S. 120-19.1 through 120-19.4.

14 (c) Members of the Committee receive subsistence and travel
15 expenses as provided in G.S. 120-3.1. The Committee may contract
16 for consultants or hire employees in accordance with G.S. 120-
17 32.02. The Legislative Services Commission, through the
18 Legislative Administrative Officer, shall assign professional
19 staff to assist the Committee in its work. Upon the direction of
20 the Legislative Services Commission, the Supervisors of Clerks of
21 the Senate and of the House of Representatives shall assign
22 clerical staff to the Committee. The expenses for clerical
23 employees shall be borne by the Committee."

24 Sec. 2. G.S. 150B-21.1(d) reads as rewritten:

25 "(d) Effective Date and Expiration. -- A temporary rule
26 becomes effective on the date specified in G.S. 150B-21.3. A
27 temporary rule expires on the date specified in the rule or 180
28 days from the date the rule becomes effective, the last day of
29 the next regular session of the General Assembly that begins at
30 least one month after the rule is adopted, whichever comes
31 first."

32 Sec. 3. G.S. 150B-21.3(b) reads as rewritten:

33 "(b) Permanent Rule. -- A permanent rule approved by the
34 Commission becomes effective five business days after the
35 Commission delivers the rule to the Codifier of Rules,
36 ratification of a bill in the General Assembly approving the
37 rule, unless the agency adopting the rule specifies a later
38 effective date. If the agency specifies a later effective date,
39 the rule becomes effective on that date.

~~1 A permanent rule that is not approved by the Commission becomes
2 effective five business days after the agency adopting the rule
3 delivers the rule to the Codifier of Rules, unless the agency
4 adopting the rule specifies a later effective date. If the
5 agency specifies a later effective date, the rule becomes
6 effective on that date."~~

7 Sec. 4. G.S. 150B-21.10 reads as rewritten:

8 "§ 150B-21.10. Commission action on permanent rule.

9 (a) At the first meeting at which a permanent rule is before
10 the Commission for review, the Commission must take one of the
11 following actions:

12 (1) Approve the rule, if the Commission determines that
13 the rule meets the standards for review.

14 (2) Object to the rule, if the Commission determines
15 that the rule does not meet the standards for
16 review.

17 (3) Extend the period for reviewing the rule, if the
18 Commission determines it needs additional
19 information on the rule to be able to decide
20 whether the rule meets the standards for review.

21 In reviewing a new rule or an amendment to an existing rule, the
22 Commission may request an agency to make technical changes to the
23 rule and may condition its approval of the rule on the agency's
24 making the requested technical changes.

25 (b) No less than once each quarter, the Commission shall
26 report to the Joint Legislative Administrative Procedure
27 Oversight Committee. Each report shall include the text of each
28 rule reviewed by the Commission, a summary of the rule, and the
29 recommendation of the Commission as to whether the rule should be
30 approved. When the Commission objects to a rule or extends the
31 period for review, it must follow the procedure set forth in G.S.
32 150B-21.12 and G.S. 150B-21.13.

33 (c) Whenever the General Assembly enacts a law approving the
34 adoption of rules, the Commission shall immediately inform the
35 affected agencies in writing, of such approval. No rule may be
36 accepted for inclusion in the North Carolina Administrative Code
37 unless it has been approved by the General Assembly.

38 Sec. 5. G.S. 150B-21.11 is repealed.

39 Sec. 6. G.S. 150B-21.12 reads as rewritten:

1 "§ 150B-21.12. Procedure when Commission objects to a permanent
2 rule.

3 ~~(a) Action.~~ -- When the Commission objects to a permanent
4 rule, it must send the agency that adopted the rule a written
5 statement of the objection and the reason for the objection. The
6 agency that adopted the rule must take one of the following
7 actions:

8 (1) Change the rule to satisfy the Commission's
9 objection and submit the revised rule to the
10 Commission.

11 (2) Submit a written response to the Commission
12 indicating that the agency has decided not to
13 change the rule.

14 An agency that is not a board or commission must take one of
15 these actions within 30 days after receiving the Commission's
16 statement of objection. A board or commission must take one of
17 these actions within 30 days after receiving the Commission's
18 statement of objection or within 10 days after the board or
19 commission's next regularly scheduled meeting, whichever comes
20 later.

21 When an agency changes a rule in response to an objection by
22 the Commission, the Commission must determine whether the change
23 satisfies the Commission's objection. If it does, the Commission
24 must approve the rule. If it does not, the Commission must send
25 the agency a written statement of the Commission's continued
26 objection and the reason for the continued objection.

27 A rule to which the Commission has objected remains under
28 review by the Commission until the agency that adopted the rule
29 decides not to satisfy the Commission's objection and makes a
30 written request to the Commission to return the rule to the
31 agency. When the Commission returns a rule to which it has
32 objected, ~~it may send to the President of the Senate and each~~
33 ~~member of the General Assembly a report of its objection to the~~
34 ~~rule.~~ shall include a record of the entire transaction relating
35 to the rule in the Commission's next report to the Joint
36 Legislative Administrative Procedure Oversight Committee.

37 ~~(b) Entry In Code.~~ -- ~~When the Commission returns a rule to~~
38 ~~which it has objected to the agency that adopted the rule, the~~
39 ~~Commission must notify the Codifier of Rules of its action and of~~
40 ~~the basis of the Commission's objection. An agency whose rule is~~

~~1 returned may file the rule with the Codifier of Rules. When the
2 Codifier of Rules enters in the North Carolina Administrative
3 Code a rule to which the Commission objected, the entry must
4 reflect the Commission's objection and must state the standard on
5 which the Commission based its objection."~~

6 Sec. 7. G.S. 150B-21.15 is repealed.

7 Sec. 8. G.S. 150B-21.19 reads as rewritten:

8 "§ 150B-21.19. Requirements for including rule in Code.

9 To be acceptable for inclusion in the North Carolina
10 Administrative Code, a rule must:

- 11 (1) Cite the law under which the rule is adopted.
- 12 (2) Be signed by the head of the agency or the rule-
13 making coordinator for the agency that adopted the
14 rule.
- 15 (3) Be in the physical form specified by the Codifier
16 of Rules.
- 17 (4) Have been reviewed by the Commission, Commission
18 and by the Joint Legislative Administrative
19 Procedure Oversight Committee, if the rule is a
20 permanent rule. "
- 21 (5) Be sent to the Codifier of Rules by the Rules
22 Review Commission with a copy of the act of the
23 General Assembly approving the rule."

24 Sec. 9. This act shall become effective October 1,
25 1995, and shall apply to all rules for which a notice of rule
26 making is published in the North Carolina Register on or after
27 that date, and to all rules that do not require publication of a
28 notice of rule making and are adopted on or after that date.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S or H

D

95-RO-01

THIS IS A DRAFT 20-JAN-95 12:09:02

Short Title: Pres. Pro Tempore RRC Appts.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE SENATE APPOINTMENTS TO THE RULES
3 REVIEW COMMISSION SHALL BE MADE BY THE PRESIDENT PRO TEMPORE
4 RATHER THAN THE PRESIDENT OF THE SENATE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 143B-30.1(a) reads as rewritten:
7 " (a) The Rules Review Commission is created. The Commission
8 shall consist of eight members to be appointed by the General
9 Assembly, four upon the recommendation of the President Pro
10 Tempore of the Senate, and four upon the recommendation of the
11 Speaker of the House of Representatives. These appointments
12 shall be made in accordance with G.S. 120-121, and vacancies in
13 these appointments shall be filled in accordance with G.S.
14 120-122. Except as provided in subsection (b) of this section,
15 all appointees shall serve two-year terms.
16 Sec. 2. This act is effective upon ratification. This
17 act does not affect the terms of the members of the Rules Review
18 Commission appointed by the President of the Senate before the
19 effective date of this act.
20

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S or H

D

95-LJ-14

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Subject Matter Rule Notice.

(Public)

Sponsors: Economic Impact of Rules Study Committee.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AN ACT TO REQUIRE AGENCIES TO BEGIN THE PROCESS OF
3 ADOPTING A PERMANENT RULE BY PUBLISHING A NOTICE OF RULE-MAKING
4 PROCEEDINGS RATHER THAN BY PUBLISHING THE PROPOSED TEXT OF A
5 RULE CHANGE.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 150B-21.1 reads as rewritten:
8 "§ 150B-21.1. Procedure for adopting a temporary rule.
9 (a) Adoption. -- An agency may adopt a temporary rule without
10 prior notice or hearing or upon any abbreviated notice or hearing
11 the agency finds practical when it finds that adherence to the
12 notice and hearing requirements of this Part would be contrary to
13 the public interest and that the immediate adoption of the rule
14 is required by one or more of the following:
15 (1) A serious and unforeseen threat to the public
16 health, safety, or welfare.
17 (2) The effective date of a recent act of the General
18 Assembly or the United States Congress.
19 (3) A recent change in federal or State budgetary
20 policy.
21 (4) A federal regulation.
22 (5) A court order.
23 (6) The need for the rule to become effective the same
24 date as the State Medical Facilities Plan approved

1 by the Governor, if the rule addresses a matter
2 included in the State Medical Facilities Plan.

3 An agency must prepare a written statement of its findings of
4 need for a temporary rule. The statement must be signed by the
5 head of the agency adopting the rule.

6 ~~An agency must begin rule-making proceedings for a permanent
7 rule by the day it adopts a temporary rule. An agency begins
8 rule-making proceedings for a permanent rule by submitting to the
9 Codifier of Rules written notice of its intent to adopt a
10 permanent rule.~~

11 (b) Review. -- When an agency adopts a temporary rule it must
12 submit the ~~rule,~~ rule and the agency's written statement of its
13 findings of need for the ~~rule,~~ and the ~~notice of intent to adopt~~
14 ~~a permanent~~ rule to the Codifier of Rules. Within one business
15 day after an agency submits a temporary rule, the Codifier of
16 Rules must review the agency's written statement of findings of
17 need for the rule to determine whether the statement of need
18 meets the criteria listed in subsection (a). In reviewing the
19 statement, the Codifier of Rules may consider any information
20 submitted by the agency or another person. If the Codifier of
21 Rules finds that the statement meets the criteria, the Codifier
22 of Rules must notify the head of the agency and enter the rule in
23 the North Carolina Administrative Code.

24 If the Codifier of Rules finds that the statement does not meet
25 the criteria, the Codifier of Rules must immediately notify the
26 head of the agency. The agency may supplement its statement of
27 need with additional findings or submit a new statement. If the
28 agency provides additional findings or submits a new statement,
29 the Codifier of Rules must review the additional findings or new
30 statement within one business day after the agency submits the
31 additional findings or new statement. If the Codifier of Rules
32 again finds that the statement does not meet the criteria listed
33 in subsection (a), the Codifier of Rules must immediately notify
34 the head of the agency.

35 If an agency decides not to provide additional findings or
36 submit a new statement when notified by the Codifier of Rules
37 that the agency's findings of need for a rule do not meet the
38 required criteria, the agency must notify the Codifier of Rules
39 of its decision. The Codifier of Rules must then enter the rule
40 in the North Carolina Administrative Code on the sixth business
41 day after receiving notice of the agency's decision.

42 (c) Standing. -- A person aggrieved by a temporary rule
43 adopted by an agency may file an action for declaratory judgment
44 in Wake County Superior Court pursuant to Article 26 of Chapter 1

1 of the General Statutes. In the action, the court shall determine
2 whether the agency's written statement of findings of need for
3 the rule meets the criteria listed in subsection (a) and whether
4 the rule meets the standards in G.S. 150B-21.9 that apply to
5 review of a permanent rule. The court may not grant an ex parte
6 temporary restraining order.

7 Filing a petition for rule making or a request for a
8 declaratory ruling with the agency that adopted the rule is not a
9 prerequisite to filing an action under this subsection. A person
10 who files an action for declaratory judgment under this
11 subsection must serve a copy of the complaint on the agency that
12 adopted the rule being contested, the Codifier of Rules, and the
13 Commission.

14 (d) Effective Date and Expiration. -- A temporary rule becomes
15 effective on the date specified in G.S. 150B-21.3. A temporary
16 rule expires on the date specified in the rule or ~~180~~ 240 days
17 from the date the rule becomes effective, whichever comes first.

18 (e) Publication. -- When the Codifier of Rules enters a
19 temporary rule in the North Carolina Administrative Code, the
20 Codifier must publish the rule in the North Carolina Register.
21 Publication of a temporary rule in the North Carolina Register
22 serves as a notice of rule-making proceedings for a permanent
23 rule that does not differ substantially from the published
24 temporary rule."

25 Sec. 2. G.S. 150B-21.2 reads as rewritten:

26 "§ 150B-21.2. Procedure for adopting a permanent rule.

27 (a) Steps. -- Before an agency adopts a permanent rule, it must
28 take the following actions:

29 (1) Publish a notice of rule-making proceedings in the
30 North Carolina Register, unless the proposed rule
31 is substantially the same as a temporary rule
32 published in the North Carolina Register.

33 (2) When required by G.S. 150B-21.4, prepare or obtain
34 a fiscal note for the proposed rule.

35 (3) Publish the text of the proposed rule in the North
36 Carolina Register.

37 (4) When required by subsection (e) of this section,
38 hold a public hearing on the proposed rule after
39 publication of the proposed text of the rule.

40 (5) Accept oral or written comments on the proposed
41 rule as required by subsection (f) of this section.

42 ~~Notice. -- Before an agency adopts a permanent rule, it must~~
43 ~~publish notice of its intent to adopt a permanent rule in the~~
44 ~~North Carolina Register and as required by any other law. The~~

1 ~~notice published in the North Carolina Register must include all~~
2 ~~of the following:~~

- 3 ~~(1) Either the text of the proposed rule or a statement~~
4 ~~of the subject matter of the proposed rule making.~~
5 ~~(2) A short explanation of the reason for the proposed~~
6 ~~action.~~
7 ~~(3) A citation to the law that gives the agency the~~
8 ~~authority to adopt the proposed rule, if the notice~~
9 ~~includes the text of the proposed rule, or a~~
10 ~~citation to the law that gives the agency the~~
11 ~~authority to adopt a rule on the subject matter of~~
12 ~~the proposed rule making, if the notice includes~~
13 ~~only a statement of the subject matter of the~~
14 ~~proposed rule making.~~
15 ~~(4) The proposed effective date of the proposed rule,~~
16 ~~if the notice includes the text of the proposed~~
17 ~~rule, or the proposed effective date of a rule~~
18 ~~adopted on the subject matter of the proposed rule~~
19 ~~making, if the notice includes only a statement of~~
20 ~~the subject matter of the proposed rule making.~~
21 ~~(5) The date, time, and place of any public hearing~~
22 ~~scheduled on the proposed rule or subject matter of~~
23 ~~the proposed rule making.~~
24 ~~(6) Instructions on how a person may demand a public~~
25 ~~hearing on a proposed rule if the notice does not~~
26 ~~schedule a public hearing on the proposed rule and~~
27 ~~subsection (c) requires the agency to hold a public~~
28 ~~hearing on the proposed rule when requested to do~~
29 ~~so.~~
30 ~~(7) The period of time during which and the person to~~
31 ~~whom written comments may be submitted on the~~
32 ~~proposed rule or subject matter of the proposed~~
33 ~~rule making.~~
34 ~~(8) If a fiscal note has been prepared for the proposed~~
35 ~~rule or will be prepared when a rule is proposed on~~
36 ~~the subject matter of the proposed rule making, a~~
37 ~~statement that a copy of the fiscal note can be~~
38 ~~obtained from the agency.~~

39 (b) Notice of Rule-Making Proceedings. -- A notice of rule-
40 making proceedings published in the North Carolina Register must
41 include all of the following:

- 42 (1) A statement of the subject matter of the proposed
43 rule making.

- 1 (2) A short explanation of the reason for the proposed
2 action.
- 3 (3) A citation to the law that gives the agency the
4 authority to adopt a rule on the subject matter of
5 the proposed rule making.
- 6 (4) The person to whom questions or written comments
7 may be submitted on the subject matter of the
8 proposed rule making.

9 Publication in the North Carolina Register of an agency's rule-
10 making agenda satisfies the requirements of this subsection if
11 the agenda includes the information required by this subsection.

12 (c) Text After Notice of Rule-Making Proceedings. -- A notice
13 of the proposed text of a rule must include all of the following:

- 14 (1) The text of the proposed rule.
- 15 (2) A short explanation of the reason for the proposed
16 rule.
- 17 (3) A citation to the law that gives the agency the
18 authority to adopt the rule.
- 19 (4) The proposed effective date of the rule.
- 20 (5) The date, time, and place of any public hearing
21 scheduled on the rule.
- 22 (6) Instructions on how a person may demand a public
23 hearing on a proposed rule if the notice does not
24 schedule a public hearing on the proposed rule and
25 subsection (e) of this section requires the agency
26 to hold a public hearing on the proposed rule when
27 requested to do so.
- 28 (7) The period of time during which and the person to
29 whom written comments may be submitted on the
30 proposed rule.
- 31 (8) If a fiscal note has been prepared for the rule, a
32 statement that a copy of the fiscal note can be
33 obtained from the agency.

34 An agency may not publish the proposed text of a rule until at
35 least 60 days after the date the notice of rule-making
36 proceedings for the proposed rule was published in the North
37 Carolina Register.

38 (b) (d) Mailing List. -- An agency must maintain a mailing
39 list of persons who have requested notice of rule making. When
40 an agency publishes a rule-making notice in the North Carolina
41 Register, Register a notice of rule-making proceedings or the
42 text of a proposed rule, it must mail a copy of the notice or
43 text to each person on the mailing list who has requested notice
44 of rule-making proceedings on the rule or the subject matter for

1 ~~rule-making described in the notice, notice or the rule affected.~~
2 An agency may charge an annual fee to each person on the agency's
3 mailing list to cover copying and mailing costs.

4 ~~(c) (e) Hearing. -- An agency must hold a public hearing on a~~
5 ~~rule it proposes to adopt in two circumstances and may hold a~~
6 ~~public hearing in other circumstances. When an agency is~~
7 ~~required to hold a public hearing on a proposed rule or decides~~
8 ~~to hold a public hearing on a proposed rule when it is not~~
9 ~~required to do so, the agency must publish in the North Carolina~~
10 ~~Register a notice of the date, time, and place of the public~~
11 ~~hearing. The hearing date of a public hearing held after the~~
12 ~~agency publishes notice of the hearing in the North Carolina~~
13 ~~Register must be at least 15 days after the date the notice is~~
14 ~~published.~~

15 ~~An agency must hold a public hearing on a rule it proposes to~~
16 ~~adopt in the following two circumstances:~~

17 ~~(1) The agency publishes a statement of the subject~~
18 ~~matter of the proposed rule making in the notice in~~
19 ~~the North Carolina Register.~~

20 ~~(2) The when the agency publishes the text of the~~
21 ~~proposed rule in the notice in the North Carolina Register and~~
22 ~~all the following apply:~~

23 ~~a. (1) The notice does not schedule a public hearing~~
24 ~~on the proposed rule.~~

25 ~~b. (2) Within 15 days after the notice is published,~~
26 ~~the agency receives a written request for a~~
27 ~~public hearing on the proposed rule.~~

28 ~~c. The proposed rule is not part of a rule-making~~
29 ~~proceeding the agency initiated by publishing a~~
30 ~~statement of the subject matter of proposed rule~~
31 ~~making.~~

32 ~~d. (3) The proposed text is not a changed version of~~
33 ~~proposed text the agency previously published~~
34 ~~in the course of rule-making proceedings but~~
35 ~~did not adopt.~~

36 An agency may may hold a public hearing on a proposed rule in
37 other circumstances. When an agency is required to hold a public
38 hearing on a proposed rule or decides to hold a public hearing on
39 a proposed rule when it is not required to do so, the agency must
40 publish in the North Carolina Register a notice of the date,
41 time, and place of the public hearing. The hearing date of a
42 public hearing held after the agency publishes notice of the
43 hearing in the North Carolina Register must be at least 15 days
44 after the date the notice is published.

1 ~~(d) Text After Subject-Matter Notice. -- When an agency~~
2 ~~publishes notice of the subject matter of proposed rule making in~~
3 ~~the North Carolina Register, it must subsequently publish in the~~
4 ~~North Carolina Register the text of the rule it proposes to adopt~~
5 ~~as a result of the public hearing and of any comments received on~~
6 ~~the subject matter. An agency may not publish the proposed text~~
7 ~~of a rule for which it published a subject-matter notice before~~
8 ~~the public hearing on the subject matter.~~

9 ~~(e)~~ (f) Comments. -- An agency must accept comments on a
10 notice of proposed rule-making proceedings published in the North
11 Carolina Register until the text of the proposed rule that
12 results from the notice is published. An agency must accept
13 comments on the text of a proposed rule published in the North
14 Carolina Register for at least 30 days after the text is
15 published or until the date of any public hearing held on the
16 proposed rule, whichever is longer. ~~An agency must accept~~
17 ~~comments on a statement of the subject matter of proposed rule~~
18 ~~making until the public hearing on the subject matter.~~ An agency
19 must consider fully all written and oral comments received.

20 ~~(f)~~ (g) Adoption. -- An agency may not adopt a rule until the
21 time for commenting on the proposed text of the rule has elapsed
22 and may not adopt a rule if more than 12 months have elapsed
23 since the end of the time for commenting on the proposed text of
24 the rule. An agency may not adopt a rule that differs
25 substantially from the text of a proposed rule published in the
26 North Carolina Register unless the agency publishes the text of
27 the proposed different rule in the North Carolina Register and
28 accepts comments on the proposed different rule for the time set
29 in subsection ~~(e)~~. (f) of this section.

30 An adopted rule differs substantially from a proposed rule if
31 it does one or more of the following:

- 32 (1) Affects the interests of persons who, based on
33 either the notice published in the North Carolina
34 Register of rule-making proceedings or the proposed
35 text of the rule, rule published in the North
36 Carolina Register, could not reasonably have
37 determined that the rule would affect their
38 interests.
- 39 (2) Addresses a subject matter or an issue that is not
40 addressed in the proposed text of the rule.
- 41 (3) Produces an effect that could not reasonably have
42 been expected based on the proposed text of the
43 rule.

1 When an agency adopts a rule, it may not take subsequent action
2 on the rule without following the procedures in this Part.

3 ~~(g)~~ (h) Explanation. -- An agency must issue a concise written
4 statement explaining why the agency adopted a rule if, within 30
5 days after the agency adopts the rule, a person asks the agency
6 to do so. The explanation must state the principal reasons for
7 and against adopting the rule and must discuss why the agency
8 rejected any arguments made or considerations urged against the
9 adoption of the rule.

10 ~~(h)~~ (i) Record. -- An agency must keep a record of a rule-
11 making proceeding. The record must include all written comments
12 received, a transcript or recording of any public hearing held on
13 the rule, and any written explanation made by the agency for
14 adopting the rule."

15 Sec. 3. G.S. 150B-21.17(a) reads as rewritten:

16 "(a) Content. -- The Codifier of Rules must publish the North
17 Carolina Register. The North Carolina Register must be published
18 at least two times a month and must contain the following:

19 (1) Temporary rules entered in the North Carolina
20 Administrative Code.

21 ~~(1)~~ (1a) Notices of ~~proposed adoptions~~ rule-making
22 proceedings and of the text of proposed rules.

23 (2) Notices of receipt of a petition for municipal
24 incorporation, as required by G.S. 120-165.

25 (3) Executive orders of the Governor.

26 (4) Final decision letters from the United States
27 Attorney General concerning changes in laws that
28 affect voting in a jurisdiction subject to section
29 5 of the Voting Rights Act of 1965, as required by
30 G.S. 120-30.9H.

31 (5) Orders of the Tax Review Board issued under G.S.
32 105-241.2.

33 (6) Other information the Codifier determines to be
34 helpful to the public."

35 Sec. 4. This act becomes effective October 1, 1995, and
36 applies to rules for which a notice of rulemaking is published in
37 the North Carolina Register on or after that date.

1 determines that a rule was not adopted in accordance with Part 2
2 of this Article and must return the rule to the agency. Entry of
3 a rule in the North Carolina Administrative Code after review by
4 the Commission is conclusive evidence that the rule was adopted
5 in accordance with Part 2 of this Article."

6 Sec. 2. This act is effective upon ratification.

7

8

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are: . . .

(93) Economic Impact of Rules (S.B. 1261 - Sherron),

. . .

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 1261

Short Title: Econ. Impact of Rules Study.

(Public)

Sponsors: Senator Sherron.

Referred to: Rules and Operation of the Senate.

June 29, 1993

A BILL TO BE ENTITLED

1

2 AN ACT TO ESTABLISH THE ECONOMIC IMPACT OF RULES STUDY
3 COMMISSION AND TO CAUSE THE RULES REVIEW COMMISSION TO
4 SUBMIT MONTHLY SUMMARIES OF RULES TO THE GOVERNOR AND THE
5 JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

6 Whereas, the number of rules adopted by agencies of the North Carolina
7 State government each year rivals the number of rules adopted by all of the agencies of
8 the federal government combined; and

9 Whereas, administrative rules can and do engender significant economic and
10 social costs as well as benefits; and

11 Whereas, continued economic development depends upon a highly
12 competitive and attractive business climate with only the minimum of government rules
13 necessary; and

14 Whereas, citizens have the right to know the economic and social costs and
15 benefits of proposed rules; and

16 Whereas, agencies of the federal government have been required to prepare
17 assessments of the economic and social costs and benefits for more than 12 years; and

18 Whereas, the General Assembly has imposed upon itself the requirement for
19 fiscal notes on proposed legislation; and

20 Whereas, knowing the economic and social costs and benefits of certain
21 proposed rules would help State agencies and the public determine the need for and
22 efficacy of proposed rules; Now, therefore,

23 The General Assembly of North Carolina enacts:

1 Section 1. The Economic Impact of Rules Study Commission is created.
2 The Commission shall consist of 12 members: three Senators and a member of the
3 Rules Review Commission appointed by the President Pro Tempore of the Senate, three
4 Representatives and a representative of local government appointed by the Speaker of
5 the House of Representatives, and four members to be appointed by the Governor, one
6 of whom shall be a representative of State government, and three of whom shall be
7 members of the public at large. The President Pro Tempore of the Senate and the
8 Speaker of the House of Representatives shall each designate a cochairman from their
9 appointees. Either cochairman may call the first meeting of the Study Commission.
10 Vacancies shall be filled in the same manner as the original appointments were made.

11 Sec. 2. The Economic Impact of Rules Study Commission shall study:

- 12 (1) The advisability of requiring all State agencies subject to the rule-
13 making provisions of Chapter 150B of the General Statutes to
14 determine and provide to the public for review and comment an
15 assessment of the economic costs and benefits of proposed rules;
- 16 (2) The costs to State agencies of producing assessments of the economic
17 costs and benefits of proposed rules; and
- 18 (3) Any other issues related to State agency rule making that the
19 Commission chooses to study.

20 Sec. 3. The Study Commission may submit an interim report of its findings
21 and recommendations and the status of its work on or before the first day of the 1994
22 Regular Session of the 1993 General Assembly. The Commission shall submit a final
23 report of its findings and recommendations to the General Assembly on or before the
24 first day of the 1995 Session of the General Assembly by filing the report with the
25 President Pro Tempore of the Senate and the Speaker of the House of Representatives.
26 Upon filing its final report, the Commission shall terminate.

27 Sec. 4. The Commission, while in the discharge of its official duties, may
28 exercise all the powers provided for under the provisions of G.S. 120-19 through 120-
29 19.4. The Commission may meet at any time upon the joint call of the cochairs. The
30 Commission may meet in the Legislative Building or the Legislative Office Building.

31 Sec. 5. Members of the Commission shall be paid per diem, subsistence,
32 and travel allowances as follows:

- 33 (1) Commission members who are also members of the General
34 Assembly, at the rate established in G.S. 120-3.1;
- 35 (2) Commission members who are officials or employees of the State or
36 local government agencies, at the rate established in G.S. 138-6; and
- 37 (3) All other Commission members, at the rate established in G.S. 138-5.

38 Sec. 6. There is allocated from the General Fund to the General Assembly
39 the sum of twenty-five thousand dollars (\$25,000) for each of the 1993-94 and 1994-95
40 fiscal years for the expenses of the Commission.

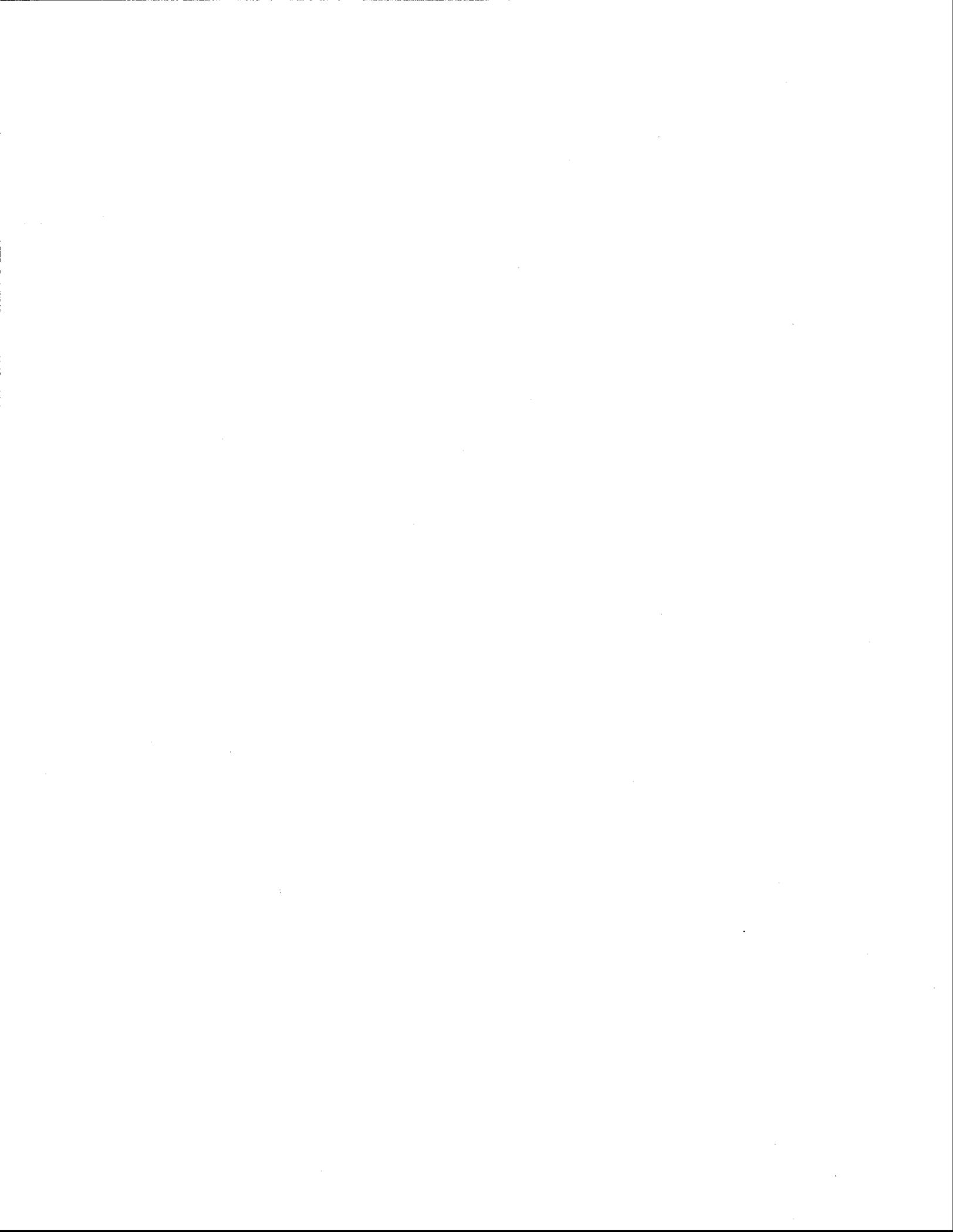
41 Sec. 7. The Legislative Services Commission, through the Legislative
42 Administrative Officer, shall assign professional staff to assist in the work of the
43 Commission. The Senate's and the House of Representative's Supervisors of Clerks
44 shall assign clerical staff to the Commission. upon the direction of the Legislative

1 Services Commission. The expenses relating to clerical employees shall be borne by
2 the Commission.

3 Sec. 8. Beginning September 15, 1993, and each month thereafter, the
4 Rules Review Commission shall prepare or cause to be prepared and shall submit to the
5 Governor and to the Joint Legislative Commission on Governmental Operations by the
6 fifteenth of each month a summary of all rules proposed and all rules adopted by State
7 agencies during the preceding month. Each department and agency of the State
8 required to file proposed and adopted rules with the Rules Review Commission shall
9 cooperate with the Rules Review Commission in the production of the rule summaries.

10 Sec. 9. This act becomes effective upon ratification.

11



APPENDIX B

ECONOMIC IMPACT OF RULES COMMITTEE MEMBERSHIP 1993 - 1994

LRC MEMBER: Rep. Harold J. Brubaker
138 Scarboro Street
Asheboro, NC 27203
(919)629-5128

President Pro Tempore Appointments

Sen. J.K. Sherron, Co-Chair
4208 Six Forks Road, Suite 302
Raleigh, NC 27609
(910)781-8721

Sen. Jerry Blackmon
P.O. Box 33664
Charlotte, NC 28233
(704)332-6164

Mr. Bill Clark
Bill Clark Construction Company
200 E. Arlington Blvd., Suite R
Greenville, NC 27858

Sen. Howard Lee
109 Glenview Place
Chapel Hill, NC 27514
(919)942-6528

Mr. Bo Lewis
Chamber of Commerce
P.O. Box 665
Washington, NC 27889

Mr. Bo Taylor
317 Nags Way Court
Nags Head, NC 27959

Sen. Dennis J. Winner
81 B Central Avenue
Asheville, NC 28801
(704)258-0094

Speaker's Appointments

Rep. E. David Redwine, Co-Chair
P.O. Box 283
Shalotte, NC 28459
(910)754-4326

Rep. Dock M. Brown
14 Meadow Lane
Weldon, NC 27890
(919)536-2428

Rep. E. Nelson Cole
P.O. Box 2309
Reidsville, NC 27323-2309
(910)342-9580

Rep. Anderson Cromer
P.O. Box 775
King, NC 27021
(910)983-3177

Rep. George M. Holmes
Route 1, Box 114
Hamptonville, NC 27020
(910)468-2401

Mr. Justin Little
4211 Chevington Road
Charlotte, NC 28226

Mr. Michael I. Luger
1015 Monmouth Avenue
Durham, NC 27701

Rep. Jane H. Mosley
513 Carolyn Court
Cary, NC 27511
(919)467-8639

Staff:

Ms. Karen Cochrane-Brown
Mr. Terrence Sullivan
Research Division
(919)733-2578

Ms. Sabra Faires
Fiscal Research Division
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Clerk:

Ann Jordon
State Legislative Bldg. Room
1303
(919)733-5821

